

SSB 5499 - S AMD 58
By Senator Mulliken

PULLED 03/08/2005

1 On page 1, after line 8, insert the following:

2 "Sec. 1. RCW 29A.04.008 and 2004 c 271 s 102 are each amended to
3 read as follows:

4 As used in this title:

5 (1) "Ballot" means, as the context implies, either:

6 (a) The issues and offices to be voted upon in a jurisdiction or
7 portion of a jurisdiction at a particular primary, general election, or
8 special election;

9 (b) A facsimile of the contents of a particular ballot whether
10 printed on a paper ballot or ballot card or as part of a voting machine
11 or voting device;

12 (c) A physical or electronic record of the choices of an individual
13 voter in a particular primary, general election, or special election;
14 or

15 (d) The physical document on which the voter's choices are to be
16 recorded;

17 (2) "Paper ballot" means a piece of paper on which the ballot for
18 a particular election or primary has been printed, on which a voter may
19 record his or her choices for any candidate or for or against any
20 measure, and that is to be tabulated manually;

21 (3) "Ballot card" means any type of card or piece of paper of any
22 size on which a voter may record his or her choices for any candidate
23 and for or against any measure and that is to be tabulated on a vote
24 tallying system;

25 (4) "Sample ballot" means a printed facsimile of all the issues and
26 offices on the ballot in a jurisdiction and is intended to give voters
27 notice of the issues, offices, and candidates that are to be voted on
28 at a particular primary, general election, or special election;

29 (5) "Provisional ballot" means a ballot issued to a voter at the

1 polling place on election day by the precinct election board, for one
2 of the following reasons:

3 (a) The voter's name does not appear in the poll book for the
4 precinct at which the voter appears and who therefore cannot be
5 verified as a registered voter;

6 (b) There is an indication in the poll book that (~~the voter has~~
7 ~~requested~~) an absentee ballot(~~, but the voter wishes to vote at the~~
8 ~~polling place~~) has been issued;

9 (c) There is a question on the part of the voter concerning the
10 issues or candidates on which the voter is qualified to vote;

11 (6) "Party ballot" means a primary election ballot specific to a
12 particular major political party that lists all partisan offices to be
13 voted on at that primary, and the candidates for those offices who
14 affiliate with that same major political party;

15 (7) "Nonpartisan ballot" means a primary election ballot that lists
16 all nonpartisan races and ballot measures to be voted on at that
17 primary."

18 Renumber the sections following consecutively and correct internal
19 references accordingly.

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20 On page 5, after line 36, insert the following:

21 "**Sec. 3.** RCW 29A.08.625 and 2003 c 111 s 240 are each amended to
22 read as follows:

23 (1) A voter whose registration has been made inactive under this
24 chapter and who offers to vote at an ensuing election before two
25 federal elections have been held must be allowed to vote a regular
26 ballot and the voter's registration restored to active status.

27 (2) A voter whose registration has been properly canceled under
28 this chapter shall vote a provisional ballot. The voter shall mark the

1 provisional ballot in secrecy, the ballot placed in a security
2 envelope, the security envelope placed in a provisional ballot
3 envelope, and the reasons for the use of the provisional ballot noted.

4 (3) Upon receipt of such a voted provisional ballot the auditor
5 shall investigate the circumstances surrounding the original
6 cancellation. If he or she determines that the cancellation was in
7 error, the voter's registration must be immediately reinstated, and the
8 voter's provisional ballot must be counted. If the original
9 cancellation was not in error, the voter must be afforded the
10 opportunity to reregister at his or her correct address, and the
11 voter's provisional ballot must not be counted.

12 (4) The names and addresses of provisional voters is not a matter
13 of public record, and no one other than an election officer may contact
14 an individual provisional voter. The election officer shall contact
15 the voter via first class mail within forty-eight hours of discovery
16 and shall inform the voter of relevant deadlines.

17 **Sec. 4.** RCW 29A.08.820 and 2003 c 111 s 254 are each amended to
18 read as follows:

19 When the right of a person has been challenged under RCW 29A.08.810
20 or 29A.08.830(2), the challenged person shall be permitted to vote a
21 provisional ballot, which shall be placed in a sealed envelope separate
22 from other voted ballots. In precincts where voting machines are used,
23 any person whose right to vote is challenged under RCW 29A.08.810 or
24 29A.08.830(2) shall be furnished a provisional paper ballot, which
25 shall be placed in a sealed envelope after being marked. Included with
26 the ((challenged)) provisional ballot shall be (1) an affidavit filed
27 under RCW 29A.08.830 challenging the person's right to vote or (2) an
28 affidavit signed by the precinct election officer and any third party
29 involved in the officer's challenge and stating the reasons the voter
30 is being challenged. The sealed provisional ballots ((of challenged
31 voters)) shall be transmitted at the close of the election to the
32 canvassing board or other authority charged by law with canvassing the
33 returns of the particular primary or election. The county auditor
34 shall notify the challenger and the challenged voter, by certified
35 mail, of the time and place at which the county canvassing board will
36 meet to rule on ((challenged)) provisional ballots. If the challenge
37 is made by a precinct election officer under RCW 29A.08.810, the

1 officer must appear in person before the board unless he or she has
2 received written authorization from the canvassing board to submit an
3 affidavit supporting the challenge. If the challenging officer has
4 based his or her challenge upon evidence provided by a third party,
5 that third party must appear with the challenging officer before the
6 canvassing board, unless he or she has received written authorization
7 from the canvassing board to submit an affidavit supporting the
8 challenge. If the challenge is filed under RCW 29A.08.830, the
9 challenger must either appear in person before the board or submit an
10 affidavit supporting the challenge. The challenging party must prove
11 to the canvassing board by clear and convincing evidence that the
12 challenged voter's registration is improper. If the challenging party
13 fails to meet this burden, the (~~challenged~~) provisional ballot shall
14 be accepted as valid and counted. The canvassing board shall give the
15 challenged voter the opportunity to present testimony, either in person
16 or by affidavit, and evidence to the canvassing board before making
17 their determination. All (~~challenged~~) provisional ballots must be
18 determined no later than the time of canvassing for the particular
19 primary or election. The decision of the canvassing board or other
20 authority charged by law with canvassing the returns shall be final.
21 Challenges of absentee ballots shall be determined according to RCW
22 29A.40.140.

23 **Sec. 5.** RCW 29A.08.830 and 2003 c 111 s 255 are each amended to
24 read as follows:

25 (1) Any registered voter may request that the registration of
26 another voter be canceled if he or she believes that the voter does not
27 meet the requirements of Article VI, section 1 of the state
28 Constitution or that voter no longer maintains a legal voting residence
29 at the address shown on his or her registration record. The challenger
30 shall file with the county auditor a signed affidavit subject to the
31 penalties of perjury, to the effect that to his or her personal
32 knowledge and belief another registered voter does not actually reside
33 at the address as given on his or her registration record or is
34 otherwise not a qualified voter and that the voter in question is not
35 protected by the provisions of Article VI, section 4, of the
36 Constitution of the state of Washington. The person filing the

1 challenge must furnish the address at which the challenged voter
2 actually resides.

3 (2) Any such challenge of a voter's registration and right to vote
4 made less than thirty days before a primary or election, special or
5 general, shall be administered under RCW 29A.08.820. The county
6 auditor shall notify the challenged voter and the precinct election
7 officers in the voter's precinct that a challenge has been filed,
8 provide the name of the challenger, and instruct both the precinct
9 election officers and the voter that, in the event the challenged voter
10 desires to vote at the ensuing primary or election, a (~~challenged~~)
11 provisional ballot will be provided. The voter shall also be informed
12 that the status of his or her registration and the disposition of any
13 (~~challenged~~) provisional ballot will be determined by the county
14 canvassing board in the manner provided by RCW 29A.08.820. If the
15 challenged voter does not vote at the ensuing primary or election, the
16 challenge shall be processed in the same manner as challenges made more
17 than thirty days prior to the primary or election under RCW
18 29A.08.840."

19 Renumber the sections following consecutively and correct internal
20 references accordingly.

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21 Beginning on page 7, line 29, strike all of section 5 and insert
22 the following:

23 "NEW SECTION. **Sec. 5.** (1) Provisional or questionable ballots
24 must not be tallied until the validity of the ballot or the voter has
25 been confirmed and, if so, the ballots will be processed in similar
26 manner to absentee ballots. A provisional ballot is issued to a person
27 seeking to vote in a polling place under the following circumstances:

- 28 (a) The name of the voter does not appear in the poll book and:

1 (i) The voter's registration was canceled but the voter questions
2 the validity of the cancellation;

3 (ii) The status of the voter's registration cannot be determined at
4 that time; or

5 (iii) The voter is registered and assigned to another polling place
6 or jurisdiction;

7 (b) The voter's name is in the poll book but there is an indication
8 that the voter was issued an absentee ballot, and the voter wishes to
9 vote at the polls; or

10 (c) Other circumstances as determined by the precinct election
11 official.

12 (2) The precinct election official shall issue a provisional ballot
13 outer envelope and a security envelope to the voter eligible for a
14 provisional ballot. The voter shall vote the ballot in secrecy and,
15 when done, place the ballot in the security envelope, then place the
16 security envelope with the ballot in it in the provisional ballot outer
17 envelope and return it to the precinct election official. The precinct
18 election official shall ensure that the required information is
19 completed on the outside of the outer envelope and have the voter sign
20 it in the appropriate space, and place it in a secure container
21 designated for provisional ballots only.

22 (3) When the provisional ballot, including provisional ballots from
23 other counties or states, are received in the elections center, the
24 circumstances surrounding the provisional ballot must be investigated
25 before certification of the primary or election. A provisional ballot
26 cannot be tallied if the registered voter did not sign either the poll
27 book or the provisional ballot envelope.

28 (4) When it is determined that the ballot is to be counted, the
29 ballot must be processed in a manner similar to an absentee ballot
30 except the provisional ballot outer envelopes must be retained
31 separately from the absentee ballot return envelopes. The manual
32 inspection of the ballots as required in WAC 434-261-070 or its
33 successor must also be carried out.

34 NEW SECTION. **Sec. 6.** At a minimum, the following information will
35 be required to be printed on the outer provisional ballot envelope:

36 (1) An oath for the voter to sign, as required by the Help America
37 Vote Act, which must be included in substantially the following form:

1 "I affirm that I am a registered voter in the jurisdiction in which
2 I am appearing and in which I wish to vote; and that I am eligible to
3 vote in this election.";

4 (2) Name and signature of voter (must be the same as on the oath);

5 (3) Voter's registered address both present and former, if
6 applicable;

7 (4) Voter's date of birth;

8 (5) Reason for the provisional ballot;

9 (6) Precinct and polling place at which voter has voted;

10 (7) Sufficient space to list disposition of the ballot after review
11 by the county auditor.

12 No provisional ballot may be rejected for lack of the information
13 described in this section as long as the voter provides a valid
14 signature and sufficient information to determine eligibility.

15 NEW SECTION. **Sec. 7.** (1) Upon receipt of the provisional ballot,
16 including provisional ballots from other counties or states, the
17 auditor must investigate the circumstances surrounding the provisional
18 ballot before certification of the primary or election. A provisional
19 ballot cannot be counted if the registered voter did not sign both the
20 poll book and the provisional ballot envelope.

21 (a) If there is no record of the voter ever having been registered,
22 the voter must be offered the opportunity to register, but the
23 provisional ballot for the current election will not be counted.

24 (b) If the voter was previously registered and later canceled and
25 the auditor determines that the cancellation was in error, the voter's
26 registration will be immediately restored and the provisional ballot
27 counted.

28 (c) If the auditor determines that the cancellation was not in
29 error, the voter must be given the opportunity to reregister at the
30 voter's correct address, but the provisional ballot for the current
31 election will not be counted.

32 (2) If the voter is a registered voter but has voted a ballot other
33 than the one that the voter would have received at his or her
34 designated polling place, the auditor must ensure that only those votes
35 for the positions or measures for which the voter was eligible to vote
36 are counted, which may require coordination with other county auditors.

1 (3) If the voter is a registered voter in another county or state,
2 the auditor shall forward the ballot and a corresponding voter guide,
3 or other means by which the ballot can be interpreted including
4 rotation if applicable, within five business days after election day to
5 the supervisor of elections for the county for which the voter resides.
6 If the provisional ballot envelope is not signed by the voter, a copy
7 of the poll book page must be included. If the county is not known, it
8 must be forwarded to the secretary of state, or counterpart, for the
9 state in which the voter resides.

10 (4) If the auditor finds that an absentee voter who voted a
11 provisional ballot at the polls has also voted an absentee ballot in
12 that primary or election, the provisional ballot will not be counted.

13 (5) The auditor shall prepare a tally displaying the number of
14 provisional ballots received, the number found valid and counted, the
15 number rejected and not counted, and the reason for not counting the
16 ballots, as part of the canvassing process and presented to the
17 canvassing board before the certification of the primary or election.

18 NEW SECTION. **Sec. 8.** When the disposition of the provisional
19 ballot determines that the provisional ballot is to be counted, the
20 provisional ballot must be processed in a manner similar to an absentee
21 ballot as provided in chapters 29A.40 and 29A.60 RCW except the outer
22 provisional ballot envelopes must be retained separately from the
23 absentee ballot return envelopes. The manual inspection of the ballots
24 as required in WAC 434-261-070 or its successor must also be carried
25 out.

26 NEW SECTION. **Sec. 9.** The secretary of state shall establish a
27 free access system (such as a toll-free telephone number or an Internet
28 web site) that any individual who casts a provisional ballot may access
29 to discover whether the vote of that individual was counted, and, if
30 the vote was not counted, the reason why the vote was not counted. The
31 secretary of state shall establish and maintain reasonable procedures
32 necessary to protect the security, confidentiality, and integrity of
33 personal information collected, stored, or otherwise used by the free
34 access system established under this section. Access to information
35 about an individual provisional ballot must be restricted to the
36 individual who cast the ballot.

1 **Sec. 10.** RCW 29A.40.050 and 2003 c 111 s 1005 are each amended to
2 read as follows:

3 (1) As provided in this section, county auditors shall provide
4 special ((~~absentee~~)) provisional ballots to be used for state primary
5 or state general elections. An auditor shall provide a special
6 ((~~absentee~~)) provisional ballot only to a registered voter who
7 completes an application stating that she or he will be unable to vote
8 and return ((~~a regular~~)) an absentee ballot by normal mail delivery
9 within the period provided for ((~~regular~~)) absentee ballots.

10 The application for a special ((~~absentee~~)) provisional ballot may
11 not be filed earlier than ninety days before the applicable state
12 primary or general election. The special ((~~absentee~~)) provisional
13 ballot will list the offices and measures, if known, scheduled to
14 appear on the state primary or general election ballot. The voter may
15 use the special ((~~absentee~~)) provisional ballot to write in the name of
16 any eligible candidate for each office and vote on any measure.

17 (2) With any special ((~~absentee~~)) provisional ballot issued under
18 this section, the county auditor shall include a listing of any
19 candidates who have filed before the time of the application for
20 offices that will appear on the ballot at that primary or election and
21 a list of any issues that have been referred to the ballot before the
22 time of the application.

23 (3) Write-in votes on special ((~~absentee~~)) provisional ballots must
24 be counted in the same manner provided by law for the counting of other
25 write-in votes. The county auditor shall process and canvass the
26 special ((~~absentee~~)) provisional ballots provided under this section in
27 the same manner as ((~~other~~)) absentee ballots under ((~~this~~)) chapters
28 29A.40 and ((~~chapter~~)) 29A.60 RCW.

29 (4) A voter who requests a special ((~~absentee~~)) provisional ballot
30 under this section may also request an absentee ballot under RCW
31 29A.40.020(4). If the ((~~regular~~)) absentee ballot is properly voted
32 and returned, the special ((~~absentee~~)) provisional ballot is void, and
33 the county auditor shall reject it in whole when special ((~~absentee~~))
34 provisional ballots are canvassed.

35 NEW SECTION. **Sec. 11.** In addition to the material required by RCW
36 29A.40.091, each county auditor shall include with any special
37 provisional ballot mailed the following information:

- 1 (1) Instructions for voting the ballot;
- 2 (2) Instructions for correcting a spoiled ballot;
- 3 (3) The fact that political party designation should be included
4 with all write-ins for partisan office;
- 5 (4) A listing of all offices and measures that will appear upon the
6 ballot, together with a listing of all persons who have filed for
7 office or who have indicated their intention to file for office;
- 8 (5) A copy of any applicable voters' guide available at that time;
- 9 (6) The fact that the voter may vote for as many or as few offices
10 or measures as he or she desires;
- 11 (7) The fact that the voter is entitled to request, and
12 subsequently vote a regular absentee ballot, and that if the regular
13 absentee is received during the time period provided by law for the
14 canvassing of absentee ballots it will be tabulated and the special
15 provisional ballot will be voided.

16 NEW SECTION. **Sec. 12.** No special provisional ballot may be
17 provided earlier than ninety days before a primary or election. An
18 application received by a county auditor more than ninety days before
19 a primary or general election may be either returned to the applicant
20 with the explanation that the request is premature or may be held by
21 the auditor until the appropriate time and then processed.

22 **Sec. 13.** RCW 29A.40.140 and 2003 c 111 s 1014 are each amended to
23 read as follows:

24 The qualifications of any absentee voter may be challenged at the
25 time the signature on the return envelope is verified and the ballot is
26 processed by the canvassing board. The board has the authority to
27 determine the legality of any absentee ballot challenged under this
28 section. Challenged ballots must be handled in accordance with chapter
29 (~~29A.08~~) . . . RCW (sections 5 through 12 of this act).

30 **Sec. 14.** RCW 29A.44.330 and 2003 c 111 s 1131 are each amended to
31 read as follows:

32 The programmed memory pack for each poll-site ballot counting
33 device must be sealed into the device during final preparation and
34 logic and accuracy testing. Except in the case of a device breakdown,
35 the memory pack must remain sealed in the device until after the polls

1 have closed and all reports and telephonic or electronic transfer of
2 results are completed. After all reporting is complete the precinct
3 election officers responsible for transferring the sealed voted ballots
4 under RCW 29A.60.110 shall ensure that the memory pack is returned to
5 the elections department. If the entire poll-site ballot counting
6 device is returned, the memory pack must remain sealed in the device.
7 If the poll-site ballot counting device is to remain at the polling
8 place, the precinct election officer shall break the seal on the device
9 and remove the memory pack and seal and return it along with the
10 irregularly voted ballots and ((~~special~~)) provisional ballots to the
11 elections department on election day.

12 **Sec. 15.** RCW 29A.44.340 and 2003 c 111 s 1132 are each amended to
13 read as follows:

14 Each poll-site ballot counting device must be programmed to return
15 all blank ballots and overvoted ballots to the voter for private
16 reexamination. The election officer shall take whatever steps are
17 necessary to ensure that the secrecy of the ballot is maintained. The
18 precinct election officer shall provide information and instruction on
19 how to properly mark the ballot. The voter may remark the original
20 ballot, may request a new ballot under RCW 29A.44.040, or may choose to
21 complete a ((~~special~~)) provisional ballot envelope and return the
22 ballot as a ((~~special~~)) provisional ballot."

23 Renumber the sections following consecutively and correct internal
24 references accordingly.

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25 On page 18, after line 21, insert the following:

26 "NEW SECTION. **Sec. 23.** (1) Sections 5 through 9, 11, and 12 of

1 this act constitute a new chapter in Title 29A RCW, to be captioned
2 "Provisional ballots."

3 (2) RCW 29A.40.050, as amended by section 10 of this act, is
4 recodified as a section in the new chapter created in subsection (1) of
5 this section."

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6 In line 1 of the title, after "RCW" insert "29A.04.008"

7 In line 2 of the title, after "29A.04.611," insert "29A.08.625,
8 29A.08.820, 29A.08.830," and after "29A.40.110," insert "29A.40.050,
9 29A.40.140, 29A.44.330, 29A.44.340,"

10 In line 5 of title, strike "new sections to chapter 29A.44" and
11 insert "a new section to chapter 29A.44"

12 In line 6 of the title, after "29A.84 RCW;" insert "adding a new
13 chapter to Title 29A RCW; recodifying RCW 29A.40.050;"

EFFECT: (1) Makes the names and addresses of voters who voted on
a provisional ballot not a matter of public record;

(2) Requires that no person other than an elections officer may
contact an individual provisional voter;

(3) Requires that elections officers contact the voter within 48
hours of discovery of rejected ballot;

(4) Harmonizes the term "provisional ballot" by replacing
"challenged ballot" and "special ballot";

(5) Requires that provisional ballots be processed similar to
absentee ballots;

(6) Provides for minimum information to be printed on outer
provisional ballot envelopes;

(7) Requires that individuals who vote with a provisional ballot
sign both the poll book and the provisional ballot envelope;

(8) Requires that secretary of state provide free access system to allow provisional voters to check status of their vote.

--- END ---